COMMITTEE REPORT NO. 6 - 1 4 (5) TABLED ON JUN 1 3 2002

14th Legislative Assembly of the Northwest Territories

Special Committee on the Implementation of Self-Government and the Sunset Clause

Report on the Sunset Clause

Co-Chairs: Hon. Jim Antoine, MLA
Ms. Sandy Lee, MLA

SPECIAL COMMITTEE ON
THE IMPLEMENTATION OF SELF-GOVERNMENT AND
THE SUNSET CLAUSE

Committee Members

Hon. Jim Antoine
MLA, Nahendeh
Co-Chair

Sandy Lee
MLA, Range Lake
Co-Chair

Bill Braden
MLA, Great Slave

Paul Delorey
MLA, Hay River North

Leon Lafferty
MLA, North Slave

Alternate Members

Michael McLeod
MLA, Deh Cho

Steven Nitah
MLA, Tu Nedhe

Hon. Vince Steen
MLA, Nunakput

COMMITTEE STAFF

David M. Hamilton
Committee Clerk

Corey McLachlan
Assistant Committee Clerk

105-00651/

Northwest Territories Legislative Assembly

Special Committee on the Implementation of
Self-Government and the Sunset Clause

JUN 13 2002

THE HONOURABLE ANTHONY (TONY) WHITFORD, MLA
SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Special Committee on the Implementation of Self-Government and the Sunset Clause has the honour of presenting its Report on its consideration of the sunset clause, and commends it to the House.

Signed,

Hon Jim Antoine, MLA
Co-Chair

Ms. Sandy Lee, MLA
Co-Chair

Yellowknife, Northwest Territories, Canada X1A 2L9/Fax (403) 920-4735/Telephone (403) 669-2200

TABLE OF CONTENTS

	Page
Introduction	1
Committee Conclusions	6
Recommendations	7
Next Steps	9
Explanation of Terms	10
References	11
Annex I: Terms of Reference for the Special Committee on Self-Government and the Sunset Clause	13
Annex II: Public Consultation	15
Annex III: Federal and Provincial Practices	16
Annex IV: Establishing the Electoral Districts for the 14th Assembly	17

INTRODUCTION

Description and Mandate of the Special Committee

The Special Committee on the Implementation of Self-Government and the Sunset Clause was established by the 14th Legislative Assembly on March 7, 2001. [1]

With specific reference to the sunset clause, the Committee's responsibilities are defined as follows:

> "The Special Committee shall:
> a) In relation to the Sunset Clause:
> i) Provide information to Northwest Territories residents concerning the intent and effect of Section 2 of the *Legislative Assembly and Executive Council Act* (the Sunset Clause), as to the need to address section 2 before the next election and to solicit input and options; and
> ii) Make recommendations to the Legislative Assembly concerning the Sunset Clause.

What Is The Sunset Clause?

The sunset clause is a section of the *Legislative Assembly and Executive Council Act*. It did not exist before 1999 and was added to the *Act* by the 13th Legislative Assembly.

As a result of amendments made in 1999, S. 2 of the *Act* now reads:

> **Electoral districts**
> 2. (1) There are 19 electoral districts as named and described in Schedule A.
> **Member**
> (2) Each electoral district is entitled to return one member to the Legislative Assembly.
>
> **Repeal of electoral districts**
> (3) This section and Schedule 'A' are repealed on the dissolution of the Fourteenth Legislative Assembly.

Subsection 2 (3) is the sunset clause.

What Does the Sunset Clause Do?

Repeal of Electoral Districts

As explained above, the sunset clause provides for the repeal of all of S. 2 as well as Schedule A of the *Legislative Assembly and Executive Council Act*, when the present Assembly is dissolved. This means that no election for a 15th Assembly could be conducted, since there would be no legal electoral districts in the NWT.

The federal *NWT Act* provides that no Assembly shall continue for more than four years from the date of the return of the writs from its election. This means that the present Assembly cannot continue to function later than January 6, 2004. After that date, unless the sunset clause is amended or repealed, there will be no Legislative Assembly in the NWT.

This could have various repercussions.

Two Scenarios

One possibility is that the federal government may have to step in and pass amending legislation to provide for an election in the NWT. This could only be done by an Act of Parliament. It does not appear that the Federal Government would have the power to prescribe the electoral districts for a territorial election except by an amendment to the *NWT Act*.

Alternatively, if the sunset clause came into effect and dissolved the Assembly without a way for the people to elect their representatives a member of the public, or an interest group, might challenge the legality of the sunset clause, under s. 3 of the *Charter*, on the grounds that the sunset clause is an unreasonable infringement of the right to vote in an election of a Legislative Assembly.

[1] See Annex I for the Terms of Reference of the Committee.

Repercussions

Either scenario would be unacceptable to the people of the NWT. Litigation would likely be time consuming and would not bring about a timely election. It would not be desirable to leave the fate of the NWT political evolution in the hands of the federal government.

Who Would Govern the NWT in the Interim?

It is highly unlikely that the sunset clause would be allowed to come into effect, since this would be an act of extreme negligence by the Assembly. Nevertheless, since the clause is law of the NWT, the question arises as to who would have the authority to govern the NWT following the dissolution of the 14th Assembly, in the absence of an election, if the sunset clause were left as it now is.

Premier and Ministers

The status of the Cabinet appears to be uncertain in that case. The *Legislative Assembly and Executive Council Act* states that the Executive Council (Cabinet) is responsible for the overall direction and management of the GNWT. The *Act* also provides that the members of the Executive Council are to be appointed upon the recommendation of the Legislative Assembly and hold office "during the pleasure" of the Assembly. Finally, the *Act* provides that the Premier shall continue to hold office following dissolution of the Legislative Assembly until the next Legislative Assembly chooses the next Premier.

Currently, Ministers continue in office between Assemblies until an election is held, a new Assembly is convened, and a new Cabinet is chosen. This is generally similar to practice in all federal, provincial and territorial governments in Canada. What is unclear is whether or not this practice could continue if the Assembly were dissolved without any arrangements for the election of a successor.

Resumption of Authority by the Commissioner

There is a very strong possibility that responsibility could shift back to the Commissioner, as "chief executive officer" of the NWT, operating under the instructions of the Minister of DIAND.[2] Given the constitutional uncertainty of the territories if the sunset clause were allowed to come into effect and territorial Ministers were no longer accountable to an Assembly. It is likely that constitutional advances, which the NWT has gone through during the past 30 years, could well be undone.

Governance, Claims and Treaty Negotiations Since 1999

The sunset clause reflected the disagreement within the 13th Assembly over the allocation of seats for the 14th Assembly and it was stated as intended for *only* the 14th Assembly. Governance issues were raised as major concerns to be dealt with before the 14th Assembly was dissolved.

In this light, it is important to review the progress, which has been made in these areas since 1999:

- On January 7, 2000 the Dogrib Agreement in Principle was signed by representatives of the Dogrib Treaty 11 Council, the Government of Canada and the GNWT. This is a comprehensive land claim and self-government agreement. Negotiations are currently proceeding towards a Final Agreement.
- The Akaitcho First Nations and GNWT signed the Akaitcho Political Accord on June 2, 1999. This was followed on July 25, 2000 by the Akaitcho Treaty 8 Framework Agreement and on June 28, 2001 by the Interim Measures Agreement. The signatories to the two latter agreements were the Akaitcho First Nations, the Government of Canada and the GNWT.
- The Deh Cho Framework Agreement and Deh Cho Interim Measures Agreement were both signed by the Deh Cho First Nations, the Government of Canada and the GNWT on May 23, 2001.

[2] *NWT Act*, Ss. 3-6

- The Salt River Treaty Land Entitlement Agreement was initialled by negotiators for the Salt River First Nation, the GNWT and the Government of Canada on November 15, 2001. It was ratified by the Salt River First Nation in December, 2001 and is to be signed on June 21 of this year.
- A Political Accord was signed between the Gwich'in Tribal Council, the Inuvialuit Regional Corporation, the Government of Canada and the GNWT on October 2, 1999.
- An Agreement-in-Principle on Self-Government in the Beaufort-Delta region has been initialled by negotiators for the Gwich'in Tribal Council, the Inuvialuit Regional Corporation, the GNWT and the Government of Canada. Signature of the Agreement in Principle is expected to follow the conclusion of a review of it by the federal government.
- Negotiations are continuing with the South Slave Metis Tribal Council and the federal government on land and resources. Self-government negotiations are to begin when the land and resources negotiations are concluded. The GNWT signed a bilateral Political Accord with the South Slave Metis Tribal Council on November 23, 2001.
- Self-government negotiations are continuing with the Deline First Nation Government, the GNWT and the Government of Canada.

An "Intergovernmental Forum" has been established by the Aboriginal Summit, the GNWT and the Government of Canada to deal with matters like economic development, capacity building and devolution. Through the Forum, a Memorandum of Intent on Devolution and Resource Revenue-Sharing was signed on May 22, 2001 by the Aboriginal Summit, the Government of Canada and the GNWT.

The above list of agreements and processes, involving federal and Aboriginal parties as well as the GNWT is impressive. In the Committee's view, it indicates the good faith in which these matters are being dealt with.

How Electoral Districts are Established

The people of the NWT elected the first Members of the Legislative Assembly in 1951.[3] The Assembly became a fully elected body in 1975. Responsible government, meaning a shift in responsibility from the appointed Commissioner to Ministers and elected MLAs, was introduced in 1985. This placed basic political power and responsibility in the hands of the Assembly.

Representation by Population

Elected Assemblies are, today, based upon the principle of "one person, one vote." This has never meant absolute parity in the number of voters in each electoral district. To give only one example from outside the NWT, in 1989 electoral districts in British Columbia ranged in size from 5511 persons (Atlin) to 68,347 (Surrey-Newton), with an average of 41,873 per district.[4]

The enactment of the *Canadian Charter of Rights and Freedoms* in 1982 has meant that the population sizes of electoral districts must correspond more closely to the average. This is now evident from a number of court cases. "Equality" of voting power has not been upheld, but "relative parity," balanced with a recognition of the need for "effective representation," has.

Federal, Provincial and Territorial Practices

Consistent with this, many legislatures have passed statutes limiting the degree of variance allowed. (Federal, Provincial and Territorial Practices, Annex III)

Responsibilities of MLAs

Part of the problem in allocating electoral districts within a jurisdiction is finding a way to provide adequate representation

---

[3] At that time, the legislative body for the NWT was called the "Territorial Council." The term "Legislative Assembly" was adopted in 1976.

[4] Norman J. Ruff and William M. Ross, "Towards a More Equitable Distribution of Seats in British Columbia," *Canadian Parliamentary Review*, Vol. 12, No. 1, Spring, 1989, P. 21.

for the sparsely populated areas without under-representing the more populous urban areas. This problem is tied to the fact that MLAs have more than one role to play.

The first has been termed the "ombudsman" role. It is especially important for the smaller communities in the NWT. The second has been termed the "legislative" role, though it is broader than the simple enactment of legislation. It tends to be the primary representative concern of the larger communities.[5]

Canadian Practice

Across Canada, the standard practice is to establish electoral districts after recommendations are received from an electoral districts boundaries commission. Such commissions are set up at "arm's length" from the government and Legislative Assembly and operate independently. Their recommendations are intended to be independent of what any particular political body, group or person may wish. Upon receipt of their recommendations, it is usually the responsibility of the Assembly to implement or modify the recommendations received.[6]

NWT Electoral Districts Boundaries Commissions

NWT electoral districts boundaries commissions have been provided for by legislation. They have carried out a process of public consultation by holding hearings in communities, and have reported to the Assembly. The practice of appointing a judge and two other commissioners was adopted in 1978 then followed for the next twenty years, and electoral districts boundaries commissions were held in 1978, 1983, 1989, 1993, 1997 (Nunavut only) and 1998 (western NWT only). This is more often than in most provinces or territories but reflects changes resulting from the closure of the Pine Point mine (1989 commission), correspondence of districts with the division boundary (1993) and the first post-division elections (1997 and 1998).

Advisory Bodies

Electoral districts boundaries commissions in the NWT have been strictly advisory. They have had no law-making power and actual changes to the electoral districts have been through changes to legislation – that is, made by the Assembly. Nevertheless, the process of public consultation - and the "arm's length" relationship - means that the recommendations of electoral districts boundaries commissions have been carefully weighed and *usually* accepted.

Establishing the Electoral Districts for the 14th Legislative Assembly

It was important for the Committee to consider how the current electoral districts were established and the issues that arose surrounding their establishments. Annex IV provides a chronology of these events.

Public Consultation

The Committee's terms of reference went beyond a study of the sunset clause and the development of a recommendation to the Assembly. The terms of reference required the Committee to *explain* the issue and *seek input and options* from the public.

The Committee prepared a brochure on the sunset clause, mailed it to all households and made a copy available on the Legislative Assembly's website. As well, a full-page open letter advertisement to the public was placed in all territorial newspapers to explain the work of the Committee; and radio announcements were made, in all official languages, through the CBC, CKLB, CJCD and CIVR. This was done in November of 2001. The public was invited to send its views to the Committee in writing or by email, and the Committee indicated that it would visit those communities that invited it.

The Committee attended 22 meetings in 19 communities, as listed in *Annex II*. The meetings were held from late November, 2001

[5] This distinction was adopted by the Supreme Court of Canada in *Reference Re: Provincial Electoral Boundaries (Sask.)*, 1991. 2 SCR.

[6] With federal, Quebec and Ontario electoral districts however, the Commission itself may actually change the electoral districts.

to the beginning of May, 2002. The Members for Deh Cho, Inuvik Boot Lake, Nahendeh Nunakput, Sahtu, Thebacha, Yellowknife Centre and Yellowknife Frame Lake attended, and in some cases organized, the meetings held in their communities by the Committee. The following MLAs also made presentations to the Committee: the Members for Mackenzie Delta, Yellowknife Centre and Yellowknife Frame Lake.

The Options

In the material it prepared for public information and consultation, the Committee outlined two options. As presented, these were -

> *Option 1:*
> Repeal, or cancel the clause. With the Sunset Clause gone, the status quo will be maintained and the Assembly will no longer have to deal with a deadline. This will allow an election to be held at the end of the current term.
>
> *Option 2:*
> Extend the timeline on the Sunset Clause to allow the next Assembly to make decisions regarding the number of electoral districts in the North, and make other decisions as necessary in the future, to address the progress of self-government negotiations.

More Consideration Needed

The sunset clause is an unusual legislative provision. It is not surprising that a number of people remarked that they had not previously heard of the clause, or did not understand it, or said that they needed more information and time to consider it. Some attending the meetings in Colville Lake, Fort Good Hope, Fort Providence and Tulita, expressed a desire to receive more information and a chance to discuss the sunset clause further, before coming to a firm conclusion. As a general rule, those who thought more consideration needed to be given to the issues favoured Option 2. The President of the Sahtu Secretariat expressed this by saying that the sunset clause should be extended to give people the opportunity to sort it out.

Repeal the Clause

On the other hand, many said they did not wish to see more time spent on this issue. A councillor in Tuktoyaktuk remarked that he did not like the idea of the government coming back to re-examine the sunset clause every four years. The Mayor of Fort Smith, referred to the cost, in time and money, of seeking public input on this question, and a speaker at Fort Good Hope drew attention to the need to deal with many other issues facing communities:

> These other issues are taking so much valuable time from the real problems - social challenges facing the community.[7]

The Mayor of Inuvik, summed up this train of thought bluntly:

> The government should repeal the clause and get on with governing.

Interpreting the Options

Varying interpretations emerged of the Options presented by the Committee. One speaker in Fort Good Hope described Option 1 as the "do nothing" option and Option 2 as "more proactive." Another speaker in Fort Good Hope thought the opposite. In Holman it was remarked that repealing the clause now, or extending it for some time in the future, were essentially the same: both were "status quo."

An Electoral Boundaries Commission

In Deline, a resident remarked that, in addition to the two options presented, there was a third: to redraw the electoral districts. Others did not see this as a third option so much as a course of action closely related to the two options presented. The differences between these views of this subject may be a matter of sequencing. A speaker in Hay River asked:

> Couldn't you simply repeal the sunset clause and put in an electoral boundaries commission to deal with

[7] Quotations in this section are taken from hand-written notes made at the meetings.

> people's fear that there is no way to address electoral boundaries?

The Mayor of Holman expressed a very similar idea:

> I think we would want the assurance that the Legislative Assembly would readdress the issue of electoral boundaries and not forget about it. Maybe a guarantee that this will be looked at again in the future, and go with status quo until then. Maybe have an electoral boundaries commission.

Current Distribution of Districts

Of course, a number of opinions were expressed on the current distribution of electoral districts. A few people thought that their region should have another representative in the Assembly either because of its size (geographic extent) or because its population seemed large enough to warrant it. This view was expressed in Rae-Edzo, with regard to North Slave electoral district. Speakers in Nunakput, Sahtu and Nahendeh expressed similar concerns.

Place of Yellowknife

Some expressed the idea that Yellowknife did not need so many seats and was too dominant in the NWT governmental system. In Inuvik, the Chief expressed this idea:

> Yellowknife has everything, all the government departments and very easy access to the government. I think we should look very seriously at the number of ridings in Yellowknife.

The idea that Yellowknife has too much access to, control over, and benefits from government - and therefore is over-represented in the Assembly - was found in many communities. However, the consensus at most meetings appeared to be that the current distribution of electoral districts, if not perfect, is satisfactory and does not require change at the present. The idea of an electoral districts boundaries commission was mainly discussed in the context of an appropriate mechanism to be used at some future time: not as an immediate task to be undertaken during the life of the present Assembly.

Self-government

The relationship between the distribution of electoral districts, the sunset clause and self-government negotiations, was discussed at every meeting. In Deline, the former Chief expressed his understanding that:

> The purpose of the sunset clause was to force the GNWT to deal with self-government issues.

Some presenters therefore expressed concerns that repealing the sunset clause, at this time, could affect self-government negotiations that are underway.

Others saw the self-government relationship differently. In Holman there seemed to be a general consensus that to wait for self-government negotiations to be completed, before repealing the sunset clause, could take many years. A speaker in Fort Smith thought that this report should include an emphasis on the importance of progress in self-government negotiations.[8]

A representative speaking for the Yellowknife Chamber of Commerce said that he did not understand how " the threat of extinguishing this legislature" would speed-up self-government negotiations. A Yellowknife resident, who introduced himself as formerly one of the active members of the Friends of Democracy, said that the Assembly should repeal the sunset clause and the government should "get on with the business of figuring out about self-government."

The Sub-Chief for the Deninu Ku'e First Nation explained that the Treaty negotiations in which her First Nation is engaged, are with the federal government. The Government of the NWT is an observer at these negotiations. Her First Nation, however, wants to work out a relationship with the GNWT and does not want to see the GNWT dissolved, as the sunset

[8] See P. 13-14.

clause may be taken to imply. For this reason, her First Nation supports Option 1.

Summary

Overall, a range of views was heard. In some meetings the issues were discussed, but the community presented no formal position. Some communities provided a letter or resolution setting forth their view. In other cases, this was communicated verbally by the Mayor, Chief or other representative. Some communities did not adopt a formal position.

COMMITTEE CONCLUSIONS

The Committee found the sunset clause difficult to explain or rationalize.

The sunset clause is perceived by some aboriginal peoples as a safeguard for their self government interests, and thus, as something that should not be repealed... rather, it should be left for future deliberations, perhaps the next assembly.

The legislation does not define the issues. It provides no useful tool or guidance. It is only a threat of dire consequence if something is not done. The Committee's mandate requires that some constructive action be taken to resolve or at least address the issues. The Committee also suggests that it would serve no purpose to defer the problem to the next assembly.

The Committee heard that it could help resolve issues related to over and under representation. Most evident were opinions that, with the 19 ridings, as we know them today, Yellowknife is grossly over-represented, while ridings such as Nahendeh, North Slave and Sahtu had too many communities for one MLA to effectively represent.

The Committee heard in almost every community that the status quo distribution of 19 seats is not problematic, and that there is no immediate requirement to address boundaries for the 15th assembly. But the reality of Yellowknife having seven MLAs upset many. The Committee agrees that the NWT can improve representation issues, and should take steps to set up the terms and criteria by which this can be done. The obvious mechanism is in a modernized *Electoral Boundaries Commission Act*.

The last time there was an electoral boundaries commission in the NWT was just prior to division. With division, the Electoral Boundaries Act was repealed, as it was only intended to govern the transition to two territories. Therefore the NWT and Nunavut are the only jurisdictions in Canada which currently do not have electoral boundaries commission legislation in place. The Committee feels that this should be remedied and in place for the 15th Assembly to action and set in place a new boundary system for the election of the 16th Assembly and subsequent, Assemblies.

The Committee does not agree that the sunset clause should be dismissed without a thorough discussion of the causes that created it, and what should be done to deal with them. The Committee trusts that this report, and the community consultations that led up to it, satisfies the need for discussion and review.

RECOMMENDATIONS

Recommendation One – Repeal of the Sunset Clause

If the Sunset Clause were allowed to legally come into effect it would not only seriously damage the status of the GNWT within Canada but could also affect self-government and even land claims negotiations. The Committee cannot recommend retaining a law that nobody wants to see brought into effect.

To defer the clause for another Assembly to consider would be simply to put off the problem of dealing with it, with the same options once more to be considered. The strongest reason for its retention would be to allow more time for its consideration. The Committee does not find this to be sufficient reason.

The accomplishments in self-government, land claims and Treaty negotiations during the past three years have shown that we will continue

to make progress together. The sunset clause, then, is something that we should put behind us as we move on, in a positive spirit, to grapple with changes in the arrangements for the governance of our territory. It is in this spirit that we recommend its repeal.

Recommendation #1
The Committee recommends that the 14th Assembly amend the Legislative Assembly and Executive Council Act to repeal subsection 2 (3).

Recommendation on Electoral Boundaries Commission Legislation

The Committee is aware of the absence of any electoral boundaries commission legislation within the present territory. The enactment of such legislation is required.

The legislation should be based, in part, upon that used earlier for this purpose in the NWT. Consideration, however, should be given to:

- preparing and releasing an electoral boundaries commission interim report, to allow for public discussion before issuing a final report; and
- establishing a definite time period for boundaries commission reviews, such as after every second territorial election.

Practices followed in other jurisdictions may be looked to for guidelines in this respect.

The criteria to be used by the commission, for the purpose of recommending electoral district boundaries, should provide the maximum flexibility possible. This is to ensure effective representation for the smaller communities including non-tax-based municipalities and recognition of the responsibilities of MLAs as both ombudsmen and legislators.

The criteria contained in s. 11 of the former *Electoral Boundaries Commissions Act* remain relevant and should be included:

> 11. The Commission, in preparing its report, shall take into consideration:
> (a) geographic and demographic considerations, including the sparsity, density or rate of growth of the population of any part of the Territory and the accessibility, size or shape of any part of the Territory;
> (b) any special community or diversity of interests of the inhabitants of any part of the Territory;
> (c) the means of communication among various parts of the Territory;
> (d) the minimum and maximum number of Members of the Legislative Assembly authorized by the *Northwest Territories Act*;
> (e) any guidelines or criteria proposed for the consideration of the Commission by resolution of the Legislative Assembly; and
> (f) any other similar and relevant factors that the Commission considers appropriate.

The Committee while reviewing provincial and territorial practices in other Canadian jurisdictions observed that some Provinces have allowed through legislation for some deviation for exceptional circumstances, from the 25% rule. The Committee is of the view that the new legislation dealing with establishing electoral districts should allow for some deviation under exceptional circumstances.

The above criteria should be reviewed for comprehensiveness and to ensure that the following are included:

1. transportation arrangements;
2. cultural and linguistic relations;
3. total population and population of voting age;
4. the boundaries of municipalities;
5. the boundaries of self-government agreement areas;
6. the boundaries of land claim settlement areas; and
7. information obtained through public hearings.

The Committee did not receive any definite requests for an immediate electoral boundaries commission and therefore does not recommend that one be established before the election of the 15th Assembly. The

Committee considers, however, that a commission will likely be required before the election of the 16th Assembly.

Recommendation #2
The Committee recommends that the 14th Assembly enact electoral districts boundaries commission legislation similar to that previously in force, but with such changes as may be desirable to maximize public involvement and to ensure the effective representation of all communities.

NEXT STEPS

The Special Committee is now ready to undertake the second phase of its mandate, which is to consider how the Legislative Assembly and the Government of the Northwest Territories may be impacted by the implementation of self-government. The Committee is mindful that its role is not to interfere with ongoing self-government negotiations but will focus on the implications once agreements are finalized and the impact agreements will have on Legislative Assembly operating structures and procedures in such areas as legislation and appropriations.

During the second phase of its mandate, the Committee will also consider how self-government may impact the Government of the Northwest Territories with respect to the functions of policy, programs, services, financing and administration over the immediate and long term. The Committee looks forward to engaging in this part of their mandate which will culminate with the Committee making recommendations on transitional measures, which could be implemented to prepare for the implementation of self-government agreements.

EXPLANATION OF TERMS

Electoral districts
Sometimes called "ridings" or "constituencies." These are geographical areas of the NWT from which MLAs are elected. Each electoral district elects one representative to the Legislative Assembly.

Executive Council
The legislative term for the Cabinet of the NWT.

Intervenor
A person, association or other body (may be a government) that joins in a lawsuit because of an interest in the outcome, without being an applicant or respondent.

Legislative Assembly
The elected law-making body of the NWT. The powers of the Legislative Assembly are found in the *NWT Act*, as passed by the Parliament of Canada.

Legislative role
The responsibility of MLAs to enact legislation affecting the whole territory and maintain the accountability of Cabinet to the Legislative Assembly.

Ombudsman
A "citizen advocate." An official appointed in some governments (e.g. the Province of Ontario) to review complaints of unfair government treatment. The Ombudsman normally suggests ways to resolve the complaint and may report the matter to the Legislative Assembly.

Ombudsman Role
The responsibility of MLAs to represent the interests of their constituents in dealings with government.

Responsible Government – a system of Cabinet government under which Ministers must have the support of a majority of MLAs

REFERENCES

Boundaries Commissions - NWT

Report – Electoral Districts Boundaries Commission of the NWT, October, 1978.

Report of the NWT Electoral District Boundaries Commission to the Speaker of the Legislative Assembly, May, 1983.

Report of the 1989/90 Electoral Districts Boundaries Commission, NWT Legislative Assembly

Report of the 1993/94 Electoral Districts Boundaries Commission. NWT, Legislative Assembly of the NWT

Report of the Nunavut Electoral Boundaries Commission, June 30, 1997.

Report of the NWT Electoral Boundaries Commission, 1998, Office of the Clerk, Legislative Assembly of the NWT, 1998.

Boundaries Commissions – Other Jurisdictions

Quebec's Electoral Map - December 2001 Report, Commission de la représentation électorale du Québec.
Report of the Royal Commission on Electoral Boundaries for British Columbia, December, 1988.

Yukon Electoral Districts Boundaries Commission Interim Report, August 2001.

Yukon Electoral Districts Boundaries Commission Final Report, January 2002.

Legal Cases

City of Charlottetown v. The Government of Prince Edward Island, PEI Court of Appeal, 1998.

Dixon and the Attorney General of British Columbia, Supreme Court of British Columbia, 1989.

MacKinnon v. Prince Edward Island, PEI Supreme Court, 1993.

Reference Re: Provincial Electoral Boundaries (Saskatchewan), Supreme Court of Canada, 1991.

Reference re: Electoral Boundaries Commission Act, Alberta Court of Appeal, 1991.

Reference re Electoral Divisions Statutes Amendment Act, 1993, Alberta Court of Appeal, 1994.

Other

Letter to Hon. Jane Stewart, The Western NWT Aboriginal Summit, NWT Legislative Assembly Tabled Document No. 13 – 13 (7), Tabled on March 23, 1999

Letter to Premier Antoine, The Western NWT Aboriginal Summit, NWT Legislative Assembly Tabled Document No. 7 – 13 (7), Tabled March 22, 1999

Letter to Premier Antoine, South Slave Metis Tribal Council Negotiations Secretariat, NWT Legislative Assembly Tabled Document No. 18 – 13 (7), Tabled March 24, 1999

Report on Bill 15: An Act to Amend the Legislative Assembly and Executive Council Act, Standing Committee on Government Operations, July 27, 1999.

Slaven, Robert and others: Friends of Democracy, NWT Legislative Assembly Tabled Document 58-13 (6), Tabled Dec.9, 1998

Publications

Courtney, John C.: Commissioned Ridings - Designing Canada's Electoral Districts (Montreal and Kingston: McGill-Queen's University Press, 2001).

Ruff, Norman J. and William M. Ross: "Towards a More Equitable Distribution of Seats in British Columbia," Canadian Parliamentary Review, Vol. 12, No. 1, Spring, 1989, Pp. 21-23.

Small, David A.: Drawing the Map: Equality and Efficacy of the Vote in Canadian Electoral Boundary Reform, Vol. XI of the Research Studies, Royal Commission on Electoral Reform and Party Financing (Toronto: Dundurn Press Ltd., 1991).

White, Graham: "Northern Distinctiveness, Representation by Population and the Charter: The Politics of Redistribution in the Northwest Territories," Journal of Canadian Studies, Vol. 28. No. 3, Fall, 1993, Pp. 5-28

ANNEX I

TERMS OF REFERENCE FOR THE SPECIAL COMMITTEE ON THE IMPLEMENTATION OF SELF-GOVERNMENT AND THE SUNSET CLAUSE

WHEREAS, the Legislative Assembly has established the Special Committee on the Implementation of Self-Government and the Sunset Clause;

AND WHEREAS, the Special Committee requires the approval of the Legislative Assembly of its Terms of Reference;

AND WHEREAS, the Special Committee has given consideration as to its Terms of Reference:

NOW THEREFORE I MOVE, seconded by the Member for Nahendeh, that the following provisions be adopted as the terms of reference for the Special Committee on the Implementation of Self-Government and the Sunset Clause:

1. The Special Committee in undertaking its review, adopts the following as operating principles as articulated by the 14th Legislative Assembly in "Towards A Better Tomorrow":
   a) The Special Committee is committed to the development of a system of Government in the Northwest Territories that recognizes and protects the rights of all residents, balancing individual citizens' rights and collective aboriginal rights;
   b) The Special Committee recognizes that aboriginal and other northern leaders working together in support of a common vision and strong sense of identity is the foundation for a better future for all residents;
   c) The Special Committee holds that aboriginal people must have greater self-determination over their social, cultural, economic and political destiny;
   d) The Special Committee recognizes that aboriginal and public governments have unique, necessary and complementary roles to play in serving territorial residents; and
   e) The Special Committee recognizes the need for strong, effective aboriginal and public governments operating cooperatively;

2. The Special Committee is further committed to;
   a) providing information to aboriginal governments and seeking their input on issues related to the achievement of its mandate; and
   b) an open and public process that provides opportunities for stakeholder groups, elected bodies and the general public to receive information and input their views on issues related to the achievement of its mandate;

3. The Special Committee shall:
   a) In relation to the Sunset Clause:
      i) Provide information to Northwest Territories residents concerning the intent and effect of Section 2 of the Legislative Assembly and Executive Council Act (the Sunset Clause), as to the need to address Section 2 before the next election and to solicit input and options; and
      ii) Make recommendations to the Legislative Assembly concerning the Sunset Clause.
   b) In relation to the Implementation of Self-government:

i) Consider how the Legislative Assembly may be impacted by the implementation of self-government in the areas of legislation and appropriations;

ii) Review the models for implementing self-government in the Northwest Territories currently being negotiated;

iii) Review the impact implementing self-government agreements will have on the Legislative Assembly operating structures and procedures;

iv) Review legislative initiatives that would implement self-government agreements;

v) Make recommendations as to how existing and future legislation, policies and practices of the Legislative Assembly might be amended or developed to reflect the concurrency of jurisdiction between Aboriginal and partnership governments and the Government of the Northwest Territories;

vi) Make recommendations on ways in which the budgetary process might be modified in form and process so as to reflect the duality of interests resulting from the implementation of self-government agreements;

vii) Make recommendations on transitional measures, which could be introduced to prepare for the implementation of self-government agreements:

c) Consider how self-government may impact the Government of the NWT with respect to the functions of policy, programs, services, financing and administration over the immediate and long term:

i) Evaluate the impact self-government will have on the authorities contained in the Northwest Territories Act and Territorial Statutes (legislation);

ii) Investigate and advise on the impact self-government will have on the public governing structure of the Legislative Assembly and Government of the Northwest Territories and its powers, functions, programs, services and finances; and

iii) Make recommendations on transitional measures, which could be implemented to prepare for the implementation of self-government agreements.

4. The Special Committee in carrying out its terms of reference will use best efforts to ensure that its discussions and activities support, compliment and otherwise not overlap with or in any way interfere with self-government negotiations or discussions taking place at the Intergovernmental Forum;
5. The Special Committee shall establish processes for providing information to and affording the residents an opportunity to make their views known;
6. The Special Committee shall have access to such persons, papers and records as necessary to the conduct of its business;
7. The Special Committee shall be provided through appropriations with adequate funds to carry out its terms of reference and assigned responsibilities;
8. The Special Committee is authorized to employ such staff and or consultants and contractors as may be necessary to carry out its responsibilities;
9. The Special Committee may consider other matters referred to it by the Legislative Assembly; and
10. The Special Committee may make recommendations it considers desirable through interim and final reports.

Adopted: March 7/2001

ANNEX II

PUBLIC CONSULTATION

Community	Date
Holman	November 20, 2001
Tuktoyaktuk	November 21, 2001
Paulatuk	November 22. 2001
Sachs Harbour	November 23, 2001
Fort Good Hope	December 16/17, 2001
Colville Lake	December 18, 2001
Deline	December 18, 2001
Tulita	December 19, 2001
Norman Wells	December 19, 2001
Fort McPherson	January 28, 2002
Inuvik	January 29, 2002
Aklavik	January 30, 2002
Fort Providence	February 5, 2002
Hay River	February 12, 2002
Fort Resolution	February 13, 2002
Fort Smith	February 13, 2002
Yellowknife	February 27-28, 2002
Rae-Edzo	March 6, 2002
Fort Simpson	May 16, 2002

ANNEX III

FEDERAL AND PROVINCIAL PRACTICES

The province with the least flexibility in its electoral boundaries is Saskatchewan where, except for two northern ridings, no electoral district may vary by more than 5% from the provincial electoral district average. Perhaps more typically, the Quebec *Election Act* states that (with special exceptions) the number of voters in any electoral district must not deviate by more than 25% from the average number of voters for all electoral districts. This means that, within the province, the number of voters in the largest electoral district can be as much as 50% greater than the number in the smallest electoral district, but no more. Newfoundland allows a variation of 10% above or below the average, but extends this to 25% for one southwest coast and four Labrador seats.

Non-demographic considerations
In addition to the numbers of voters in each electoral district, in all jurisdictions attention is also paid to other considerations, such as geographical features, culture, language, transportation arrangements and municipal boundaries. It is generally recognized that remote and sparsely populated areas cannot be adequately represented on the same basis as urban areas.

Some Quebec examples
Using Quebec as an example again, some deviation from the 25% rule is allowed. The Quebec *Election Act* itself establishes an electoral district for the Îles de la Madeleine although they are too under-populated to meet the 25% rule (76% below the provincial average). The commission may also vary the 25% rule in exceptional circumstances. In it's most recent report, it has done so for the Ungava district and for four electoral districts in the Gaspé peninsula. These all fall below the 25% provincial average and are justified on the basis of geography, dispersal of the population, transportation arrangements, difficulty of maintaining contacts with MNAs, limited number of points of public service access, and economic and social considerations.

ANNEX IV

ESTABLISHING THE ELECTORAL DISTRICTS FOR THE 14TH ASSEMBLY

The Effects of Division of the NWT

Amendment of the NWT Act
Up until 1999, the federal *NWT Act* provided that the NWT's Legislative Assembly must include not less than 15, nor more than 25, MLAs. In 1999, the territory of Nunavut was to be created and in 1998, the federal *NWT Act* was amended so that the minimum required number of MLAs in the western NWT's Legislative Assembly would be 14. This was the number of electoral districts that would be left following the separation of Nunavut from the western NWT, if no adjustments were made.

Nunavut and NWT Boundaries Commission Legislation
In connection with the division of the NWT, an electoral boundaries commission was thought necessary for Nunavut, and possibly the western NWT, for the election of the first post-division Assemblies. In 1996, the Legislative Assembly of the NWT accordingly passed an *Electoral Boundaries Commissions Act* to replace the previous *Electoral Districts Boundaries Commissions Act.*

Repeal of the Electoral Boundaries Commissions Act
The new *Act* was intended only to govern the transition to two territories. It provided, in one statute, for separate boundaries commissions for Nunavut and western parts of the NWT, and for its own repeal on June 30, 1999. Both Nunavut and western NWT Commissions were held, and the *Act* was repealed on June 30. As a result of the division process, therefore, Nunavut and the NWT are today unusual among provincial and territorial governments in that they do not have electoral boundaries commission legislation in place.[9]

The 1998 Electoral Boundaries Commission

Commission Established
Under the *Electoral Boundaries Commissions Act,* the Assembly appointed a three-person electoral boundaries commission for the western NWT on June 10, 1998. The Commissioners were Justice Virginia Schuler (Chair), Nick Sibbeston and Lucy Kuptana.[10]

The Commission conducted extensive community hearings and, under the *Act,* had the responsibility to take into account a wide range of factors, including:

- Geography,
- demography,
- interests of residents,
- communications, and
- the number of seats in the Assembly.[11]

---

[9] It is understood that a Bill to provide for future electoral boundaries commissions within Nunavut may be introduced into the Nunavut Legislative Assembly in the near future.
[10] Mr Sibbeston was subsequently appointed as Senator for the NWT. Boundaries commission legislation normally excludes MLAs, MPs and municipal councillors from appointment as commissioners.
[11] The applicable sections of the *Act* are quoted on P. 15-16.

Equivalent Voting Power
A number of persons making presentations to the 1998 Commission argued that the principle of equivalent voting power required that no district should have a population more than 25% above the average for all electoral districts, and that no electoral district should have a population more than 25% below the average. This range was based on an interpretation of court decisions applying to other parts of Canada.

The Commission noted that many districts in the NWT were outside the 25% range. The extreme departures included: Yellowknife North (+49%), Yellowknife South (+152%), De Cho (-63%) and Tu Nedhe (-70%). In all, 8 of the 14 electoral districts in the NWT at that time varied from the average by at least 25%.

"Minimal Changes" Recommended
The Commission was strongly influenced in its hearings by representations that land claims, self-government and western constitutional development negotiations and discussions were underway. It therefore decided to recommend "minimal changes" and did not apply the "25% rule" to the western NWT. In spite of this, the Commission did conclude that the size of Yellowknife, and the principle of "effective representation," required the creation of two additional seats for the city and its vicinity. This would have resulted in a Legislative Assembly of 16 seats, with 6 of these elected from Yellowknife and its vicinity.

The 13th Assembly Responds to the Electoral Boundaries Commission Report

The Commission's report was tabled in the Legislative Assembly on November 5, 1998, and debated on November 10 and 12.

On November 12, a motion was introduced into the Assembly to replace the 4 existing electoral districts for Yellowknife with 6, in an Assembly of 16. This motion was defeated by 7 votes to 6. A motion was then made to create 5 electoral districts for Yellowknife in an Assembly of 15. This too was defeated, in an unrecorded vote. Finally, a motion was proposed to redraw the boundaries of the four existing Yellowknife seats, to make the distribution within Yellowknife more equitable without changing the total number of Yellowknife (4) or territorial (14) seats. This motion was defeated by 5 votes to 7.

The outcome of the Assembly's, discussions, deliberations and votes was therefore not to increase the number of seats beyond the minimum of 14, and not to adjust the boundaries between any of the electoral districts. The election of the 14th Assembly was therefore intended to be held on the basis of the existing 14 electoral districts.

The Electoral Districts of the NWT are considered in Court

The Issue
On November 25, 1998, a Yellowknife-based association, called the "Friends of Democracy," began an action in the NWT Supreme Court against the Government of the NWT, to have the existing electoral districts of the NWT declared unconstitutional. A number of Aboriginal groups decided to intervene in the case.[12]

The Friends of Democracy asked the Court for a declaration that the population differences in the 14 western NWT electoral districts, would violate the right to vote, provided for in Section 3 of the *Canadian Charter of Rights and Freedoms*. This was because of the "hugely unequal" populations between the districts.

[12] These were the Metis Nation-NWT, Dene Nation, North Slave Metis Alliance, Sahtu Secretariat Inc. and Lutsel K'e Dene Band. The Government of the NWT provided financial support for the court proceedings.

S. 3 of the *Charter* reads:

> "Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein."

The Finding
Justice de Weerdt remarked that the right to vote is "at the core of the very essence of a free and democratic society." In this context, he found that an "undue dilution" of that right had occurred in all those districts of the NWT, which were underrepresented in the Assembly by more than 25%.

It is important to appreciate that, although finding that certain (more populous) electoral districts were *under*-represented, Justice De Weerdt did not apply the 25% rule to the less populous electoral districts:

> "it is not open to the court to make a sweeping declaration which would apply to those districts."

In other words, Justice De Weerdt indicated that there may be valid reasons for an electoral district to be *over*-represented by a deviation of more than 25% from the average constituency size. However, once the average for all districts was calculated, no district should be *under*-represented by more than a 25% deviation from the average.

Thus, on the basis that some districts were *under*-represented, Justice De Weerdt declared parts of Section 2 of the *Legislative Assembly and Executive Council Act*, and of *Schedule A* (describing and naming the electoral districts), to be "invalid and without force or effect in law." He suspended this declaration until April 1, 1999 to give the Assembly sufficient time to amend the invalid provisions of the *Act,* to comply with section 3 of the Charter. This suspension was later extended to September 1, 1999.

The NWT Court of Appeal

The Aboriginal intervenors in this case decided to appeal Justice De Weerdt's decision. On June 16, 1999, Justice Foisy, of the NWT Court of Appeal, denied the intervenors the right to appeal. His decision was based in part upon the legal status of the intervenors, who were not parties to the action. He also found that the intervenors had not shown that they had an existing interest that was prejudiced by Justice de Weerdt's decision. The fact that land claims and self-government negotiations were underway was not sufficient reason to infringe the right to vote:

> "In our view, the questions and the solutions raised by the intervenors at this juncture are more related to the political forum than to the legal forum."

The 13th Assembly Changes the Electoral Districts

Bill-15 Is Introduced
Bill-15, *An Act to Amend the Legislative Assembly and Executive Council Act,* was tabled in the Assembly in March, 1999. This was to meet Justice De Weerdt's requirement that the *Act* be amended to comply with the *Charter*,

Bill-15 complied with the requirement than no electoral district be under-represented by more than 25% from the territorial average. The less populous districts were not affected. The Legislative Assembly was enlarged to 19 seats, with 7 seats representing Yellowknife and its vicinity, 2 representing Hay River and 2 representing Inuvik.

Standing Committee on Government Operations
After Second Reading, the Bill was referred to the Standing Committee on Government Operations for review. The Committee held public hearings in six communities, met with the Yellowknives Dene First Nation and attended the Dene Nation Assembly in Jean Marie River.

The Committee reported that it heard, "time and again" that the enactment of Bill 15 would "create a rift" among northern peoples. It expressed disappointment that the Government of the NWT, in drafting Bill-15, did not "display more creativity in devising solutions to the boundary problem in consultation with aboriginal people."

In speaking of "solutions," the Committee appeared to have had broad constitutional innovations in mind. On the specifics of changes to the electoral districts through Bill-15, the Committee rejected another proposal, based on 15 seats with adjustments and amalgamations of the smaller districts. It found the government's proposal, based on a 19-seat Assembly, the best alternative:

> "Each change to a riding impacts on the percentage variations for all ridings. Bill 15 is the option that adds the least number of seats in total while keeping all ridings within +25% of the average riding population and retaining the smaller existing ridings. It also does not require an extensive redrafting of all electoral boundaries in the NWT."[13]

The Sunset Clause is Proposed
The Committee made various proposals intended to promote the continuation of constitutional development discussions in the NWT. Among these was the recommendation that Bill-15 be amended so that Section 2, and *Schedules A* and *B* to the *Act,* be repealed upon the dissolution of the 14th Assembly. This was the sunset clause, and was intended "only for the life of the next (14th) Assembly." It was intended to provide a target date "in the formulation of a new constitution for the Northwest Territories."[14]

Bill-15 Enacted.
The Committee's *Report* was presented to the Speaker on July 27. The Committee's sunset clause recommendation was accepted, and, with this change, Bill-15 was enacted on August 20, 1999. On December 6, 1999 the election of the 14th Assembly was held.

Summary
Ss. 2 (3) was inserted into the *Legislative Assembly and Executive Council Act* as a compromise between divergent views on the allocation of electoral districts in the NWT within the Assembly and between the Assembly and the courts. The clause indicated that the allocation of seats, needed for the election of the 14th Assembly, required future consideration.

[13] "Report on Bill 15: *An Act the Amend the Legislative Assembly and Executive Council Act,"* Standing Committee on Government Operations, July 27, 1999, P. 6.
[14] "Report on Bill 15", P. 12